

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
SHAM GAS EXPRESS, INC.,) OTA NO. 21027198
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, April 20, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:52 a.m. and concluding at 11:42 a.m. on
Thursday, April 20, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ ANDREW KWEE
ALJ MICHAEL GEARY

For the Appellant: PATRICK FINNEGAN
DENNIS DUSKIN
ADEL JOUDI

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

STEPHEN SMITH
RAVINDER SHARMA
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-16 were received at page 10)

(Department's Exhibits A-D were received at page 9.)

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W I T N E S S E S :

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C R O S S

R E D I R E C T

R E C R O S S

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1 California; Thursday, April 20, 2023

2 9:52 a.m.

3
4 JUDGE LONG: We're opening the record in the
5 Appeal of Sham Gas Express, Inc. OTA Case Number is
6 21027198. This matter is being held before the Office of
7 Tax Appeals. Today's date is April 20th, 2023, and the
8 time is approximately 9:30 a.m. This hearing is being
9 convened electronically.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. My name is Keith Long,
12 and I will be the lead Administrative Law Judge. Judge
13 Mike Geary and Judge Andrew Kwee are the other members of
14 this tax appeal. All three judges will meet after the
15 hearing and produce a written decision as equal
16 participants. Although the lead judge will conduct the
17 hearing, any judge on this panel may ask questions or
18 otherwise participate to ensure that we have all the
19 information needed to decide this appeal.

20 I'm sorry it looks like we just had someone join
21 us. I'm seeing someone on the screen named Dennis.

22 Can you please identify yourself?

23 MR. FINNEGAN: Yeah. Dennis Duskin is the
24 accountant for Mr. Joudi, and we've requested that -- he
25 obviously might have had some technical difficulty getting

1 in, but he's on the list of individuals that we want to
2 have at the hearing.

3 JUDGE LONG: Yes, I do have him, and I see his
4 last name popped up.

5 Mr. Duskin, can I just verify with you that your
6 microphone works. Can you hear me? Mr. Duskin, are you
7 there?

8 MR. FINNEGAN: Judge Long, I'm going to text him
9 and ask him if he's on mute.

10 JUDGE LONG: Okay. Yeah. I can see that you --
11 his microphone is muted.

12 MR. FINNEGAN: I just texted him and asked him if
13 he was on mute, so hopefully that works.

14 JUDGE LONG: Okay. Looks like I'm not showing
15 mute icon anymore. Mr. Duskin, can you hear me?

16 Okay. Thank you. I just received a message from
17 Mr. Duskin.

18 Mr. Duskin, we do ask that people generally don't
19 use the chat function within Webex. I understand that was
20 because you're having a microphone issue. Let's try and
21 work that out.

22 Ms. Alonzo, I think we're going to go off the
23 record again, and we're going to give Mr. Duskin a few
24 minutes here to try and figure out his microphone issue.

25 Okay. So with that, I'm going to be silent for a

1 few minutes.

2 (There is a pause in the proceedings.)

3 JUDGE LONG: Ms. Alonzo, let's go back on the
4 record.

5 We're still on YouTube. Good. Good for us. All
6 right. Okay. So where was I?

7 I'm going to start from the beginning of this
8 paragraph again because I think otherwise it's super
9 awkward.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. My name is Keith Long,
12 and I will be the lead Administrative Law Judge. Judge
13 Mike Geary and Judge Andre Kwee are the other members of
14 this tax appeals panel. All three judges will meet after
15 the hearing and produce a written decision as equal
16 participants. Although the lead judge will conduct the
17 hearing, any judge on this panel may ask questions or
18 otherwise participate to ensure that we have all the
19 information needed to decide this case.

20 For the record, will the parties please state
21 their names and who they represent, starting with the
22 representatives for CDTFA.

23 MR. SHARMA: Ravinder Sharma, Hearing
24 Representative for CDTFA.

25 MR. PARKER: Jason Parker, Chief of Headquarters

1 Operations Bureau with CDTFA.

2 MR. SMITH: Stephen Smith, Tax Counsel for CDTFA.

3 JUDGE LONG: Thank you.

4 This is Judge Long. And will everyone please
5 state their names for Appellant.

6 MR. FINNEGAN: This is for Mr. Joudi. My name is
7 Patrick Finnegan, CPA, representing Sham Express Mart.

8 MR. DUSKIN: This is Dennis Duskin. I'm the
9 prior accountant for the Express Mart, and I did his
10 bookkeeping for about 15 years.

11 Are you able to hear me.

12 JUDGE LONG: Yes, we can hear you.

13 MR. DUSKIN: Okay, very good.

14 JUDGE LONG: Mr. Joudi, can you just state your
15 name for the record.

16 MR. JOUDI: I'm Adel Joudi. I'm the owner.
17 Represent me Mr. Patrick for this case.

18 JUDGE LONG: Thank you.

19 Okay. My understanding in this case is that we
20 have two witnesses, and they are Mr. Joudi and also
21 Mr. Duskin. Additionally, the exhibits for this appeal
22 consist of CDTFA Exhibits A through D. I do want to note
23 here that there were some defects with the hearing binder
24 that was distributed in March. Page numbering was
25 slightly off and also a portion of CDTFA Exhibit D was

1 missing. We redistributed the exhibit binder this morning
2 with those pages that were missing.

3 In addition, I would like to point out that
4 Exhibit D is a copy of CDTFA's Appeals Bureau decision,
5 dated January 14th, 2021. And all of the parties have
6 copies of this decision as evidenced by a partial copy
7 that was included with Appellant's opening brief and a
8 complete copy, which was included with CDTFA's reply
9 brief.

10 At the prehearing conference, Appellant did not
11 have any objections to CDTFA's exhibits. So taking all of
12 that into consideration, OTA admits CDTFA's exhibits.

13 (Department's Exhibits A-D were received in
14 evidence by the Administrative Law Judge.)

15 In addition, Appellant submitted Exhibits 1
16 through 15 at the prehearing conference. CDTFA objected
17 to exhibits pertaining to an audit other than the audit of
18 Appellant's. However, OTA admits these documents over
19 CDTFA's objection and will give Appellant's exhibits the
20 appropriate weight.

21 Finally, after the March 28th, 2023, prehearing
22 conference, Appellant submitted a statement from
23 Mr. William DeZavala, an enrolled agent that was
24 previously listed as a witness. My understanding is that
25 the submission -- because Mr. DeZavala is unable to attend

1 today -- the submission was provided timely. And as noted
2 at the prehearing conference, I would like to offer CDTFA
3 the opportunity to respond to this statement.

4 Does CDTFA wish to provide a written response to
5 this statement after the hearing?

6 MR. SHARMA: This is Ravinder Sharma. No. We
7 will address that in our presentation. Thank you.

8 JUDGE LONG: Thank you.

9 And does CDTFA object to admission of this
10 statement as an exhibit?

11 MR. SHARMA: Yes. The Department would object to
12 the statement as not relevant to this case before the
13 Office of Tax Appeals.

14 JUDGE LONG: Thank you. As with your prior
15 objections, I'm going to admit this exhibit. However, OTA
16 will give this exhibit the appropriate weight and
17 consideration. Appellant's -- and going forward, this
18 will be known as Exhibit 16. Appellant's Exhibits 1
19 through 16 are admitted over CDTFA's objections.

20 (Appellant's Exhibits 1-16 were received
21 in evidence by the Administrative Law Judge.)

22 However, I would like to remind Appellant that
23 the issue here is the audit of Appellant's business. And
24 while they may use their time as they please, it may be in
25 their best interest to tailor their attention to the case

1 at hand. The exhibits summarized above are admitted into
2 the evidentiary record.

3 There's one issue in this appeal. It is whether
4 any reduction to the measure of unreported taxable sales
5 of gasoline is warranted. Today's hearing should be
6 approximately 90 minutes, and that consists of opening
7 statement and witness testimony by Appellant for
8 35 minutes. Before I allow Appellant to begin, I do need
9 to swear in the witnesses.

10 Mr. Joudi and Mr. Duskin, can you please raise
11 your hand.

12
13 A. JOUDI,
14 produced as a witness, and having been first duly sworn by
15 the Administrative Law Judge, was examined and testified
16 as follows:

17
18 D. DUSKIN,
19 produced as a witness, and having been first duly sworn by
20 the Administrative Law Judge, was examined and testified
21 as follows:

22
23 JUDGE LONG: Okay. Before we move forward with
24 the opening presentation, does anyone have any additional
25 questions?

Okay. Then Mr. Finnegan, you may begin when you are ready.

MR. FINNEGAN: Thank you, Judge Long. Thank you Judge Kwee, and thank you Judge Geary for being here today. Is this just the opening statement, Judge Long, or is this the entire presentation for me, please?

JUDGE LONG: This is the entire presentation,
including the witness testimony.

MR. FINNEGAN: Okay. Thank you so much.

PRESENTATION

MR. FINNEGAN: Let me begin by identifying that the audit took place from the period of July 2015 to June 2018. Mr. Joudi, Adel Joudi is the owner of Express Mart, located in Porterville, California. And Mr. Joudi and I spoke yesterday, and I have a few questions we can go over. I'll ask him these questions directly.

DIRECT EXAMINATION

BY MR. FINNEGAN:

Q Mr. Joudi, thank you very much for being here today. I greatly appreciate you joining us.

A You're welcome.

Q In 2015 something happened in Porterville that effected your business greatly. In 2015 ARCO station, a

1 large gasoline company, was built on the Highway 65 north
2 of Highway 190, one freeway stop from your business. Is
3 that accurate?

4 A Yes, sir.

5 Q So let me talk about your business and how it was
6 opened. When we spoke, you indicated that your
7 business -- you purchased your business, and that business
8 was closed for a year before you took it over. There was
9 nobody operating that business. Can you talk about the
10 prior two owners of that business, please?

11 A Yes. When I took over, the store was closed.
12 The owners before me, they bought it two times. They
13 closed it out. They couldn't make it. And I don't know
14 about it. I'll be honest with you. After I bought it,
15 they told me that. And I had run this store, and I trying
16 to make this store.

17 To make this store working out, you have to be
18 competitive with everybody else. And this way I had my
19 way to do it, and I was the cheapest gas in town. Always.
20 Even I -- part my friends and family. I lost them because
21 of that, because I was always the cheapest gas in town,
22 and they want -- they don't want me to do that because
23 they have another gas stations, and they want -- they want
24 me to raise my prices, but I couldn't do that.

25 I was afraid I'm not going to make it, and I'm

1 going to lose all my money. Whatever with I start this
2 business, I put everything what I had. Like, if I lost
3 this business it's going to be for zero.

4 And I'll be honest, about 10 years until I make
5 it, 15 years until I make this business. Now it's doing
6 well. Until I make this business, I had to do new margin
7 in the gas in making people stop by at the store, at least
8 making some money to survive the store inside the store.
9 That's the only thing.

10 Q Thank you, Mr. Joudi. Really, what I take from
11 that discussion that I had with you, is that it was
12 critical for you to keep your gasoline prices low. You
13 also have a mini-mart associated with your gasoline
14 station. And your mini-mart sales actually has liquor
15 sales, which is unusual in the State of California, but
16 your business was grandfathered in that. You sell beer
17 and wine. You sell cigarettes. You sell soda, and you
18 also have nontaxable items.

19 Does -- so let me go through my notes on here.
20 Tulare County where you're located, you're located in the
21 City of Porterville. I show on Exhibit 13 that Tulare
22 County has the highest per-capita poverty level of any
23 county in California. Were you aware of that, Mr. Joudi?

24 A Yes, sir.

25 Q In fact, Porterville has a high percentage of

1 individuals that are working in the farming industry, and
2 it's sufficed to say that it's not an extremely affluent
3 town? Is that correct?

4 A Yes, sir.

5 Q Okay. So you had indicated that you had been
6 required to keep your prices low, and I'll go over this
7 with the judges. In 2015 your financial statements, which
8 are shown on the auditor's Schedule G -- 12G. It indicated
9 \$3.819 million in taxable sales in the first year of the
10 audit in 2015. However, in 2018, just a short three-year
11 period afterwards, you had raised your taxable sales to
12 \$6.118 million, roughly a 76 percent increase.

13 In 2015 you had paid taxes -- sales taxes to the
14 State of California of \$277,000. Yet, by 2018 you had
15 paid \$444,000, an increase of \$167,000 from the beginning
16 of the audit. Were you aware of that, Mr. Joudi?

17 A Yes, sir.

18 Q Okay. Okay. Now, there's an important area that
19 I noticed in social media that talks about your business,
20 and I have that on Exhibit 13. And some of the items that
21 were discussed are that:

22 Gus on Google stated, "And still the cheapest
23 gasoline in town."

24 Google GF578 says, "Cheap gas as well."

25 Jeremiah says, "Cheap gas and good pricing."

1 Sheila says, "This gas station has the lowest
2 prices in town."

3 And Vicky Painter on GasBuddy says: "I stop here
4 for the low gas prices."

5 Now, you follow social media. It's important for
6 your business. You check these. Is that something that
7 you notice --

8 A Yes, sir.

9 Q -- these -- okay. So it's important for you to
10 keep your gas prices low?

11 A Low.

12 Q Okay. In 2015 through 2018, you utilized the
13 services of Dennis Duskin and Associates to compute your
14 financial statements as well as your income taxes.

15

16 DIRECT EXAMINATION

17 BY MR. FINNEGAN:

18 Q Dennis, thank you very much for joining me today.
19 I appreciate you, and I appreciate you being able to talk
20 to the judges in this regard?

21 A They're required to make a certain amount of
22 profit. In fact, you know they couldn't operate if they
23 didn't make a good amount of profit. But because
24 Mr. Joudi has a convenience mart, he was able to maintain
25 his business on the convenience mart and was able to

1 sustain low gas prices.

2 Also, I do a lot of convenience marts and gas
3 stations. I'm very familiar with the business. And
4 something that happened early in the 2000s during the Gulf
5 War and things of that -- in that time, as well as around
6 this time the prices varied quite a bit. And I saw with a
7 lot of my clients that their gasoline were -- they were
8 losing money on the independent -- for the independent
9 gasoline stores. And so that was very common.

10 And I didn't see that as a warning on this
11 particular client. And we do double-entry accounting, and
12 we keep an eye on accounts for any problems with cash flow
13 or any indications that look like any underreporting and
14 attempt to make the corrections if necessary. But didn't
15 see any problem with the account. The cash flow seemed
16 fine.

17 The client indicated he was losing money at times
18 when he was selling gas, and I also didn't see that as a
19 warning because I observed that on many other clients that
20 I was doing the books and records for. So that seemed
21 normal. He wasn't losing money in his business in its
22 entirety because he has a store and was able to sustain
23 those losses. And, eventually, as you know now, gas
24 stations are doing very well.

25 So that's the way independent gas stations work.

1 They have periods where they make very little, sometimes
2 actually lose money selling gas. And they have times
3 where they make a very good profit. And the period that's
4 being audited here was -- included a period where he was
5 losing money, and that's really important to consider in
6 this audit.

7 Q Thank you. Dennis, you had mentioned that the
8 taxpayer was able to sustain that business based on his
9 sales that he made in his retail store, really using gas
10 prices to lure customers into the business. I took a look
11 at taxable sales in 2015, and the taxpayer had a
12 28.845 percent markup factor for liquor, beer, cigarettes,
13 soda. In 2016 it had grown to 38.35 percent over cost.
14 In 2017 it was 36.84 percent?

15 And by 2018 his margins over cost for all of his
16 taxable items were at 46 percent over his cost. Is that
17 in your -- I mean, you've been in the business, I believe,
18 30-years plus. Can you describe those types of margins
19 for a business and how it enables that to operate and be
20 successful?

21 A Well, it's also -- it's all whatever the market
22 will bear. I mean, any business will try to make as much
23 money as possible. It's all about the competition. So I
24 don't know particularly why those markups would have
25 increased during that time, but I'm sure the competition

1 must have allowed that.

2 In the big picture, what really count is can he
3 make a living on his business. He would have to --
4 there's a point where he just couldn't make a living and
5 couldn't drop the prices anymore, and he has to compete.
6 So I mean at some point, he would have to increase his
7 markup in order to sustain his ability just to live on his
8 business.

9 Q In the CDTFA's hearing reports, they indicate
10 that the Department never received any purchase invoices
11 for gasoline. I find that inaccurate because they also
12 reconciled the gasoline purchases to the vendor
13 information. Do you ever recall where the auditor,
14 Auditor Lutz, ever contacted you indicating that he was
15 lacking any accounting records that was needed. It
16 certainly wasn't shown in the 414Z, which are the contacts
17 between you and the auditor. Was there anything that you
18 recall that he asked for and you said, "We don't have?"

19 A I don't have anything in my notes. And, again,
20 this is a long time ago, so I don't recall that.
21 Although, it's possible I don't believe so, and I don't
22 recall it. No.

23 Q Then can I tell you that in his working papers
24 there was no contact with you. There was no emails
25 provided to you. There was no indication that you hadn't

1 provided documents such as bank statements, purchase
2 invoices, check ledgers, any of the necessary business
3 verification documents?

4 A I don't recall any question about any of the
5 documents being a problem at all. The only thing I really
6 recall about this audit specifically is that he just
7 didn't believe that the markup could be that low or go
8 into a minus. And that triggered him using his own
9 calculations. Just couldn't believe it could be that low,
10 and so he began using the California averages.

11 And then he started then looking into, you know,
12 more locally to try to come up with his own number because
13 he just didn't think it could be possible that it was that
14 low.

15 Q Let me clarify too to the judges. In 2015, the
16 markup for gas was 9 percent over cost. In 2016 it was
17 6.3 percent over cost and 7.91 percent over cost in 2017.
18 Dennis, you do a lot of these companies. Is that
19 something to be concerned about? Are those what you feel
20 are numbers that are sustainable?

21 A Again, I've seen the independent gasoline
22 stations have a huge variance, from losing money up to
23 5 percent to making up to 20 or even 25 in some rare cases
24 on the gas, depending on the fluctuation of the economy
25 and the way things are going on in the world. So I've

1 seen this.

2 And like I said, during this particular period, I
3 had lots of clients that actually were losing money on
4 their gasoline and sustaining their businesses with their
5 convenience stores. I did not have any independent
6 gasoline stations that were trying to do this. They
7 used -- they had a name-brand and were able to survive the
8 future purchases of their gasoline as they do, and they
9 don't have to do the -- you know, buy their gasoline at a
10 spot price. They buy futures and just go on a continued
11 markup.

12 That's generally what you will see with a Chevron
13 or a Union 76. They just set their markup at, you know,
14 10 percent, and they purchase their gasoline futures and
15 there's really no risk to them. But these small markets
16 that are buying at spot price, it goes up and done.

17 Q One of the areas that I found fascinating to me
18 as a CPA and as an ex -- I mean, I spent 20 years as an
19 auditor with the CDTFA. In 2015, Mr. Joudi had gasoline
20 sales of a little over \$3 million. By 2018 that amount
21 had risen to \$5.23 million. Would you say that I --
22 seriously, that's not a pattern or practice of an
23 individual that is committing tax avoidance.

24 Mr. -- or Dennis, is that -- I mean, that's a
25 substantial growth in sales. Would you agree?

1 A It is. But I don't think that's necessarily an
2 issue, only because somebody could start making a whole
3 bunch of money. I mean, I don't know that -- you know,
4 because -- it doesn't mean that he's suddenly showing more
5 because he's being more honest. It's just the market was
6 just doing much better at that time. Again, I don't see
7 any indications of underreporting, you know, based on his
8 cash flow. So, you know, that makes sense to me.

9 MR. FINNEGAN: Sure. One of the areas that I
10 looked at, Judges, is what the market was doing during the
11 period of the audit. And to be able to do so, I went to a
12 GasBuddy, a company that tracks gasoline prices. Excuse
13 me. And I did this for the period of 2015 all the way
14 through -- excuse me -- through the end of the audit in
15 2018, and something very interesting happened. In July of
16 2015 prices dropped fairly substantially.

17 Let me get the file in front of me and take a
18 quick look and walk you through that. It's -- it's this
19 Exhibit 9 that's really critical. What happened in
20 July of 2015, again, I indicated that prices dropped. The
21 price dropped until about February of 2016. And this is a
22 macroeconomics look at it, and it was done by Gas --
23 through GasBuddy. It's a 60-month average retail price
24 chart.

25 And where I had to go to get this documentation

1 was GasBuddy. But I had to put in the nearest major
2 metropolitan area in that, and that happened to be Fresno.
3 Bakersfield wasn't there.

4 BY MR. FINNEGAN:

5 Q But, Mr. Joudi in Porterville is located half --
6 would you say halfway between Bakersfield and Fresno, Mr.
7 Joudi, is where you're at?

8 A Yes. Yes.

9 Q Okay. If you see by -- in this chart, you'll see
10 the prices begin increasing in February of 2016 and go all
11 the way through, again, on a steady increase until about
12 November of 2019 -- or '18. I apologize. And then what
13 happens is in November of '18 prices drop dramatically.
14 They go from in Fresno \$3.74 and they damn near get to
15 about \$3 a gallon and oh, about \$0.75. And this is
16 occurring in a time period between October and January and
17 February of 2019.

18 Now, what happens during a drop in pricing -- and
19 I provided the OTA with this analysis. It's something
20 called a rocket and a feather that is common in gasoline.
21 And Dennis can -- I'll ask you quickly about this after I
22 explain it. And we're all gasoline consumers here, but
23 what you see is prices go up very rapidly. And we've all
24 lived through that. But what happens is when they
25 decrease -- or I think they go down very slowly. They go

1 up quickly like a rocket and come back down as a feather.

2 What happened in October of 2018, that's a period
3 when the auditor, Auditor Lutz, was conducting his shelf
4 test and going to the business and looking at prices. So
5 he begins on August 8th look at the prices. And this is
6 in Schedule 8 if you want to go through this and come
7 along with it. He goes through stores and he's checking
8 prices and he sees that they're pretty stable until around
9 October 2018.

10 I pulled up -- in getting prepared for this
11 discussion, I looked at what the cause was for gasoline
12 price and cost changes at the end of 2019. And what
13 happened was there was an oversupply of gasoline, and
14 there was concern about the U.S. economy going into a
15 recession. Gasoline prices are subject to socioeconomic
16 conditions, be at war, being international, being
17 something with OPEC that are out of Mr. Joudi's control.

18 But what happens when prices fall rapidly is that
19 profit is taken by gasoline stations. This is a perfect
20 time to -- and what you've seen in my working papers is
21 that was exactly what Mr. Joudi was doing. It went the
22 entire audit, basically from 2000 -- early to 2016 through
23 the audit period of 2018 in June of prices rising. The
24 auditor comes in and tries to attempt to determine what
25 his actual margins were in gasoline, and he picks a period

1 where they're having rapid income by Mr. Joudi.

2 This was not reflective of the period during the
3 audit. It was an aberration at best. Yet, the CDTFA
4 takes this income and believes that it's representative of
5 all other periods. So I would caution CDTFA to say that
6 the margin enjoyed during a period of rapidly decreasing
7 cost is -- is valid for the entire audit period. So that
8 is something I certainly want you to be aware of.

9 Let me keep going through my notes. Now,
10 Mr. Duskin also presented Mr. Joudi with a monthly
11 financial statement, statement of cash flow, balance
12 sheet, inventory, all of that based on Mr. Joudi's
13 preparation of a monthly sales summary. And the way
14 Mr. Joudi generated that document is every day he'd take
15 the sales summaries from his cash register and record them
16 on those sheets, and then he presented them to Mr. Duskin
17 who prepared financial statements.

18 Now, the CDTFA is going to tell you in their
19 presentation that this wasn't sufficient, but I'd argue
20 Mr. Lutz utilized these financial statements to look at
21 taxable sales outside of gasoline, and he accepted those
22 based on the margins that he saw utilizing the records
23 that were prepared by Mr. Duskin. The only area that he
24 questioned was on gasoline.

25 Now, we've spoken about the margins on taxable

1 items, other than gasoline being in the mid-30s.
2 Taxpayer's profit was generated substantially by the
3 fuel -- or by the taxable items. But what you also
4 noticed during the audit, if you look at the financial
5 statements, the taxpayer's gross profit rises every year.
6 In 2015 it goes -- it was \$500,000. In 2016 it's
7 \$533,000. In 2017, it's \$590,000. And by 2018, it's
8 \$711,000. \$711,000 from 501. So he's increasing his
9 gross profit in each and every year. Even above with
10 gasoline, he's recognizing large profits.

11 In fact, in the 2018 period, he has roughly
12 \$5.3 million in gasoline sales of -- and \$4.9 million in
13 purchases, and this is shown on Exhibit 12, page 5 of 5.
14 The spread between 5.3 and 4.9 is \$400,000. That's a lot
15 of money for him bringing in on a gasoline business and
16 CDTFA is attempting to impeach his gasoline sales, which I
17 consider very problematic.

18 The other area that I would like to talk about is
19 some areas that I found errors and omissions in the audit
20 working papers. The Department has generated a document
21 Schedule 12 A-1C, and that document is utilized by the
22 Department to determine how much Mr. Joudi understated
23 their sales throughout the document in front of me.

24 Mr. Joudi, when we talked today you indicated
25 that you did not charge different prices for cash and

1 credit until you indicated June of 2018 when you bought
2 your -- you changed your dispensary on your gasoline. You
3 also purchased new pumps new software. You incorporated
4 all those changes; is that correct?

5 Can you take yourself off mute, Mr. Joudi?

6 A Can you hear me.

7 Q Oh, now I can hear you. Go ahead and repeat
8 that?

9 A Yes, sir.

10 Q Okay. So you never had any difference in prices
11 on cash and credit until you changed your pumps in June of
12 2018; that's correct, right?

13 A That's true.

14 Q I'm looking at schedule 12A-1C. This is
15 Exhibit A, page 22 of 96 by the Department. Yet, if you
16 notice their working papers, they allocate 50 percent of
17 your sales being made through credit cards. That could
18 not have happened, right? And the entire period from
19 July 2015 to the last month of June 2018, your business
20 had no way to differentiate those prices; is that correct?

21 A Yes, sir.

22 Q Okay. The other area that the Department has is
23 they're indicating again, 50 percent of your sales were by
24 credit card. But you have ACH where if a customer uses
25 their debt card, they're charged the same price as cash.

1 Is that accurate?

2 A Yes, sir.

3 Q And that remains accurate to this day; correct?

4 A Until now I still have it.

5 Q Yeah. It's still the same?

6 A It's still the same.

7

8 REDIRECT EXAMINATION

9 BY MR. FINNEGAN:

10 Q What I find concerning though, is -- Dennis, did
11 the auditor in your recollection, did he ever ask you when
12 the change of cash and credit was done, in your
13 recollection?

14 A I don't believe he addressed the issue of the
15 credit card ratio and the gas in the audit at that time.
16 I don't think that came up until later when you were
17 working on it.

18 But another point that I wanted to make out or to
19 point out was that something else had happened in the
20 audit, was that he said the store sales looked fine. The
21 inventory ratio markup, everything in the store looked
22 fine. So he was being perfectly honest in the store but
23 just not being honest in his gasoline sales, and
24 everything looked great in the store.

25 So I thought that was a very important point as

1 well. And the auditor also, he never told me that any of
2 the supporting documents were insufficient. I believe
3 they were very sufficient, and he just never addressed
4 that at all as being insufficient. He asked if he did
5 have the cash register tapes, which he didn't have, but he
6 never said that there was a problem with, you know,
7 without presenting those. But --

8 Q Well, I'm looking at Schedule 12A-1C. And to be
9 quite honest, I believe Auditor Lutz utilizes this
10 documentation without any -- any work on it. He doesn't
11 go any further. If the Judges could look at the schedule,
12 there's a couple of things that really are concerning for
13 me. He uses a percentage, again, of allocating credit
14 card versus cash. That goes away. There was no credit
15 card differentiation on retail sale prices.

16 So really the number, if the schedule is used,
17 the entire amount of 28.28 would be utilized instead of
18 0.23. I'm not making the contention that this is
19 accurate. The other area that he -- he doesn't do any
20 work on is where he's calculating the weight of gas credit
21 card price. When I took a look at purchases, I segregated
22 them by unleaded as well as premium gasoline.

23 The auditor on every one of these documents I've
24 seen on other audits that he's conducted uses 50 percent
25 without any analysis on his part. He uses regular gas at

1 70 percent. He uses plus at 15 and supreme at 15. I
2 looked at his overall purchase of gasoline.

3

4 REDIRECT EXAMINATION

5 BY MR. FINNEGAN:

6 Q Mr. Joudi, you buy 82 percent of your gasoline is
7 unleaded. Is that accurate?

8 A Yes, sir.

9 Q Okay. To be able to go to 15 percent plus, it's
10 bringing in unleaded as well as supreme gas. And to equal
11 15 percent, you'd have to use seven percent of regular and
12 7 percent of supreme to get to that percentage; right?

13 A Yes, sir.

14 Q Seven-and-a-half percent?

15 A Seven and a half.

16 Q Well, if he's -- if you're buying 82 percent and
17 you blend at 7 percent, your regular is going to be
18 75 percent, not 70. The auditor did no analysis
19 whatsoever. Is that accurate?

20 A Yes, sir.

21 Q Okay. The other area that I want to bring in is
22 I asked Dennis Duskin, your accountant -- excuse me --
23 that the auditor is indicating that 50 percent of your
24 sales are through credit cards. Again, this Porterville,
25 California. It's not an area of high credit card usage.

1 This is the salt of the Earth. These people are
2 hardworking. They try not to run up their credit cards?

3 But what's interesting is we -- I had Dennis pull
4 the 1099-Ks, which are the credit card receipts. And --
5 but within those -- that amount on the 1099-Ks is also ACH
6 transactions -- debt card transactions. When we looked at
7 that it was about 35 percent of your customers used their
8 ACH, not credit cards. Is that accurate?

9 A Yes, sir.

10 Q Okay. So those are areas of the auditor's
11 working papers that I was concerned about, and I'm going
12 to wrap this discussion up.

13 One, you know, you're looking at a taxpayer that
14 increased his reported amount substantially over the three
15 years of the audit. Again, this is not the procedures of
16 somebody that's looking for tax avoidance. He roughly
17 increased his sales tax payments from 267 -- or 277 to
18 444. \$444,000, I mean, that's a lot of money to increase
19 your sales tax. It's certainly not how somebody goes
20 about avoiding taxation.

21 I do want to bring in one other fact. And I
22 understand the short leash, Judge Long, that you're
23 providing me to be able to discuss another audit. And I
24 certainly appreciate Attorney Smith. I've been blessed to
25 have worked with him in the past and gone through these

1 areas.

2 The one thing I wanted to point out is that the
3 Department, the Fresno district conducted this audit at
4 the same time as when Mr. Joudi was going through his
5 audit, right. In fact, nine out of the ten times that
6 they went to Mr. Joudi's store and took a test of his
7 sales prices, they did the same at this business in Tulare
8 County. In fact, it was the same auditor. It's a
9 remarkable circumstance that I was able to compare two
10 audits together. Okay. It doesn't happen like that.

11 In fact, the owner of the business provided me
12 authorization to receive these documents because I had
13 asked. Hey, the Department is telling me that the gas
14 markup is insufficient for the area. I didn't know what
15 that meant. Insufficient for what? What was the number?
16 I've never seen any -- and the Department has never
17 provided any analysis telling me what the average markup
18 is in gasoline in Tulare County. I don't believe it
19 exists.

20 I've asked numerous times, and you'll see that on
21 my responses to the Department. Please tell me what's --
22 what does he have to do to get this through? And the
23 company that was audited, they were kind enough to provide
24 me with the working papers and the authorization. But
25 what I found is when the comparison was going on pricing,

1 Mr. Joudi was on average \$0.10 less a gallon than what
2 this other company that had been audited.

3 And, again, they were audited on the same day
4 nine out of ten times. So there was a -- that's why I
5 believe it was a valid review. When I looked at 2015 for
6 this other company, I brought them all into tax included.
7 So I'm looking apples to apples. They are the same
8 functional number. And the taxpayer -- the other taxpayer
9 in Tulare, his margins were 13 percent over cost in 2015.
10 Mr. Joudi's was, I believe, 9.6. A difference of
11 three-and-a-half percent.

12 For 2016, the other entity had markups of around
13 9. Mr. Joudi was 6.36. And in 2017, I believe the other
14 entity was 11. Mr. Joudi was 7.91. The differences
15 between those two margins were roughly 3.17 or 3 percent.
16 Somewhere around there. The other businesses were always
17 3 percent higher than Mr. Joudi. But what I found is then
18 the auditor in his analysis of what the retail sales
19 prices were, Mr. Joudi was \$0.10 on a cost of a little
20 over \$3 a gallon. That roughly equals to that 3 percent
21 difference that we've seen in the difference between the
22 two entities.

23 Now, CDTFA accepted the higher margins by this
24 other entity. So my thought was, is what does my client
25 have to -- what are his numbers that they have to be for

1 CDTFA to say, yeah, that looks good? Well, the Department
2 knew. The supervisor knew that you had two competing
3 businesses being audited at the same time with the same
4 arguments saying, hey, our records are accurate. And I
5 appreciate the fact.

6 I'm not going to indicate what the other business
7 was or question why the Department of the Fresno district
8 chose one over the other by assessing a liability. What
9 I'm saying is their consistency has to happen. What
10 happened in this audit is that the Department is
11 indicating that my client owes an additional \$1,070,000 of
12 additional taxable measure for unreported gasoline.

13 Now, where that really hits us is let's say
14 that's \$300,000 every year. What the Judges have to
15 understand is CDTFA reports this difference to the
16 Franchise Tax Board as additional gross receipts. That
17 information gets passed along to the IRS as well. For the
18 Department to hand out these determinations like candy
19 without any solid financial background or analysis is a
20 detriment.

21 Mr. Joudi would have had to pay tax -- additional
22 income tax at, let's say, 20 percent over \$300,000. Each
23 year he would have an additional \$60,000 of federal income
24 tax as well as the Franchise Tax Board additional tax.
25 Had he just rolled over and said yes, I owe this

1 \$1,070,000 times the sales tax rate. This is what I am
2 now stuck with. This is the results of this, and we find
3 that very concerning.

4 I'm going to summarize this as best I can. I
5 know some of the contentions that I've made I'll repeat.
6 Mr. Joudi does not have to sell at a specific tax rate.
7 That's not a requirement from the State of California.
8 They can't dictate what his sale prices are. They will
9 ask is this a reasonable assessment? Is this a reasonable
10 amount of margin? And in this point, absolutely yes.
11 He's growing his business. Every year his profit margins
12 are up. Every year he's paying additional taxes. This is
13 not the practice of somebody committing tax avoidance.

14 I appreciate the opportunity of discussing this.
15 I'm obviously passionate about this. I was an auditor for
16 20 years, and I don't like to see a taxpayer that is --
17 I've lived this case since 2019, and I'm prepared to
18 answer anything that you have.

19 MR. DUSKIN: Can I make a few comments before you
20 finish, sir?

21 MR. FINNEGAN: Yeah. Thanks, Dennis.

22 MR. DUSKIN: As far as the supporting documents,
23 there's no problem with the supporting documents in this
24 audit. There's no complaints about the supporting
25 documents. There's no -- also, there was no problem with

1 the cash flow. There's no indication of additional money
2 being deposited in the bank that was not accounted for.
3 There was no indication of additional cash that wasn't
4 being accounted for.

5 Also, as his tax preparer, I didn't see any
6 indication of excess lifestyle living or anything in
7 excess showing that he was making a lot of money. It
8 looked like he was actually having a very hard time back
9 in that time. So I think this audit is really coming down
10 to the State Board just couldn't believe -- that the
11 auditor just couldn't believe that the markup was that
12 low.

13 He just couldn't believe it was that low because
14 he saw, I think one month or a period when it went into a
15 minus. And he just couldn't believe it was that low, and
16 it just kind of kicked the whole thing off. The store was
17 fine. The markup in the store was fine. Everything
18 looked fine. It really is just coming down to he can't
19 believe the markup was that low, and I do believe, in
20 fact, it was so. And I saw that with many other clients
21 in that period of time.

22 That's all.

23 JUDGE LONG: Okay. Thank you. At this time --
24 I'm sorry. At this time, I want to turn to my
25 co-Panelists to see if they have any questions.

1 Judge Geary, do you have any questions?

2 JUDGE GEARY: I believe I do.

3 Mr. Duskin, can you hear me okay?

4 MR. DUSKIN: I can.

5 JUDGE GEARY: You said you were the Appellant's
6 tax preparer. But earlier I think the indication from
7 Mr. Finnegan was that you did his income taxes. Did you
8 also do his sales and use tax returns?

9 MR. DUSKIN: Yes.

10 JUDGE GEARY: And did you base your -- the
11 information that you put on those returns on the summary
12 that Mr. Joudi gave you?

13 MR. DUSKIN: That's correct. He also --

14 JUDGE GEARY: Did you ever see -- go ahead.

15 MR. DUSKIN: We also have an analysis that we do
16 on all of our clients on the cash flow. If we ever
17 observe more money going into the bank then -- or we have
18 several indicators keeping an eye on our accounts that
19 would indicate underreported sales. We didn't have any
20 trouble with this account. His records seem to match.

21 JUDGE GEARY: Okay. You mentioned that you would
22 look at money going into accounts. Could you tell me what
23 other factors that your business would look at?

24 MR. DUSKIN: Yes. So we look at, if they buy
25 more than they sell, that would be an indication of

1 unreported sales. If they don't buy enough, there would
2 be an underreporting of purchases, which is also a warning
3 for the State Board. I mean, if they are underreporting
4 purchases, maybe they are underreporting sales. So we
5 keep an eye on that as well.

6 JUDGE GEARY: And did you ever see the cash
7 register receipts that Mr. Joudi based his summaries on?

8 MR. DUSKIN: I think we only requested those. He
9 didn't maintain or keep those during the audit period, but
10 he started keeping them, I believe, after -- once the
11 audit started, they requested a period for inspection.

12 JUDGE GEARY: Would you characterize those cash
13 register receipts as source documents for the data?

14 MR. DUSKIN: The ones that they received after
15 the audit period?

16 JUDGE GEARY: Just the cash receipts period. The
17 cash register receipts that Mr. Joudi --

18 MR. DUSKIN: Yeah.

19 JUDGE GEARY: -- bases his summaries --

20 MR. DUSKIN: I would also consider those as
21 source documents. It's very common in the industry that
22 they keep daily records, and that's often sufficient.

23 JUDGE GEARY: Did you ever --

24 MR. DUSKIN: Yeah, I do recommend they keep their
25 cash register receipts. And when I told him that, he did

1 start keeping them.

2 JUDGE GEARY: Okay. All right. Those are the
3 only questions that I have. Thank you.

4 MR. DUSKIN: Thank you.

5 JUDGE LONG: Thank you.

6 And Judge Kwee, do you have any questions?

7 JUDGE KWEE: Hi. This is Judge Kwee. I did have
8 a couple of questions. And one was, I noticed in the
9 CDTFA's decision it was referencing the taxpayer sells
10 non-branded gasoline. And I was wondering if the
11 difference between, you know, selling branded fuel versus
12 non-branded fuel, if that has any impact on the comparison
13 with the statewide, you know, fuel averages if non-branded
14 fuel impacts the difference in price that would be
15 charged, or if that makes any difference to what the price
16 charge would be as compared to a branded fuel station.

17 MR. FINNEGAN: I can try to answer that, but
18 Mr. Joudi, certainly, you're the expert on gasoline.
19 Judge Kwee, with the difference between a branded and
20 non-branded is a branded gasoline station is subject -- or
21 has the ability to do gasoline futures. So what happens
22 in a time of increasing prices, is they have futures at a
23 lower price. So they're provided gasoline at prices that
24 were negotiated with the oil companies at the time.

25 When it compares to non-branded, Mr. Joudi is

1 subject to the spot market and that when prices rise, he
2 pays them immediately, versus branded company that would
3 have that ability to buy at a lower price. Also, what
4 happens is when prices decrease, which does not happen
5 very often, and from what I showed you on Exhibit 9, it
6 didn't happen really in the audit, is that there's an
7 ability to gain profit because you're buying at the spot
8 market when prices are dropping dramatically.

9 In fact, some of the documents I've shown in this
10 audit or review, is that prices dropped, like, \$0.60 in
11 the period of two months. So Mr. Joudi would gather
12 profit at that time. But like I mentioned earlier when
13 prices are rising, it's much less advantageous to be an
14 independent gasoline business.

15 Mr. Joudi, do you want to add to that?

16 MR. DUSKIN: I would say something on that. I
17 would say that also the branded gasoline stations command
18 a little bit higher price because I believe that auto --
19 the drivers believe that branded fuel is a little bit
20 cleaner and safer for their vehicle. You know, not
21 everybody believes that.

22 Then in California we don't really have to worry
23 about that because our regulations are very strict on
24 gasoline. But I do believe that the brand gasoline
25 stations are able to command a higher price in whole just

1 because people believe it's a better gasoline.

2 JUDGE KWEE: Okay. Thank you. One other
3 question was just about the location of the gas station.
4 I think it was mentioned that it was between, like, two
5 highways. And I'm wondering if the primary customer of
6 the gas station, would those be, you know, people that hop
7 on and off the freeway, or is the primary customer locals
8 that they see over and over again that live in
9 Porterville? Or is that not something that's really
10 known?

11 MR. JOUDI: Can I answer this question?

12 JUDGE KWEE: Please go ahead.

13 MR. JOUDI: Okay. Because I have far more people
14 who comes to my store, they go off the freeway. From
15 town, they go off to left field. They have to drive the
16 freeway. And I have both customers, from freeway and from
17 town.

18 JUDGE KWEE: Okay. Thank you.

19 And I think the last question that I had was just
20 about the markup that was calculated by CDTFA. You're
21 estimating that -- or I guess the records are reflecting
22 between for the 3 years as 6 to 9 percent markup over
23 cost. It was like 6.36 to 7.79 to 9.41. And I'm just
24 wondering with that amount of a markup, you know, after
25 considering, you know, the sales taxes, income taxes

1 overhead is that -- would taxpayer be operating at a net
2 loss at that -- if they were accepting that type of a
3 markup? Or was that still enough to cover cost, not
4 considering the liquor and food sales, just considering
5 the gas sales? Was that markup causing a loss?

6 MR. DUSKIN: I can address that.

7 JUDGE KWEE: Okay.

8 MR. DUSKIN: I can address that. I'm doing his
9 records when he was losing money and some months when he
10 was even losing money in his gasoline, he was still making
11 money. He wasn't losing money overall in the business
12 because of those tough months of not making money in
13 gasoline. He was able to sustain it. If you look at the
14 whole year, you'll see he had a profit and he was able to
15 sustain his lifestyle.

16 Apparently, I think in some of those years I
17 think it was tough for him in some of those years. But it
18 was tough, especially, I'm sure a few months when he was
19 actually losing money in gasoline. But overall, he was
20 making money in this business due to his convenience
21 market.

22 JUDGE KWEE: Okay. And --

23 MR. FINNEGAN: Judge Kwee, I also indicated in
24 2018 his gross profit just from gasoline alone was close
25 to \$400,000. And usually, it was over \$200,000 each and

1 every year.

2 JUDGE KWEE: Okay. And yeah, I did recall that.
3 And I think that just triggered one final question. I'm
4 just wondering if there's any sort of advantage to having
5 a high-volume low-markup sale in -- like, for example,
6 like if there's a benefit paid to -- or volume discount
7 paid if you are selling a higher volume than if you're
8 selling a lower volume with a supplier or if there's any
9 sort of rebate or incentive that you get for having
10 certain thresholds met, or if that's not at all a
11 consideration for increasing the volume of gas sales?

12 MR. DUSKIN: I would say that test has to be done
13 in the business by the owner by seeing what the market
14 will bear and seeing how many customers it brings in. And
15 there's a point where you find out if you raise your price
16 too high you don't get any customers. You don't make any
17 money. And there's a point when you find out how low you
18 have to go to draw the people in. And if drawing the
19 people in gets more money in the convenience store, then
20 that's a net win overall.

21 JUDGE KWEE: Okay. So there weren't any sort of
22 like manufacturer volume-based discounts or rebates based
23 on the volume of the sale? That was not at all a
24 consideration that would have been applicable?

25 MR. FINNEGAN: What Mr. Joudi did have though,

1 Judge, is he did have a card lock system. He had
2 customers that come in that he has contract with. I
3 believe it's Flyer. That was in the audit working papers
4 by the district. Flyer via contract pays Mr. Joudi --

5 What is it? 3 percent over cost, Mr. Joudi? And
6 oftentimes you'd be paid less than that 3 percent on
7 gasoline. Can you expound to that as well, Mr. Joudi?

8 MR. JOUDI: Yes, sir. Okay. I have the
9 contract. They call it CFN card. The CFN card contract
10 between me and Flyer. Their customers, they come and fill
11 up gas from my station, and they give me over my cost
12 \$0.03 each gallon. That's all the -- that's all. And I
13 accept that to bring people to my store to buy merchandise
14 from the store.

15 That's why I accept it, but it's not enough
16 margin for the gas \$0.03 to survive off of it. And
17 sometimes I've been losing money in this. In this case,
18 like losing the gas, but I'm making money inside the
19 store. That's as we say.

20 MR. FINNEGAN: And the \$0.03 over a gallon of gas
21 is 1 percent margin. So again, this is further evidence
22 that he's keeping a low margin to be able to make the
23 money on the retail side. And boy is he making the money
24 on the retail side.

25 JUDGE KWEE: Okay. Thank you.

1 I don't have any further questions, but I believe
2 Judge Geary might have a question. So I will turn it back
3 over to the other Panel members from here. Thank you.

4 JUDGE LONG: Thank you.

5 Judge Geary?

6 JUDGE GEARY: Yes. Thank you. Some of the
7 questions from Judge Kwee reminded me to ask a question of
8 Mr. Joudi.

9 Mr. Joudi, Mr. Finnegan was talking about ARCO
10 coming into the area at some point and became competition
11 for you. Is ARCO located on a freeway, at least right
12 next to the freeway on-ramp or off-ramp?

13 MR. JOUDI: Yes. In town -- both us in town, but
14 it's located on 190. I'm located on 65, like between me
15 and ARCO like not even a mile, around a mile between. And
16 the reason we have to keep with ARCO, even compete with
17 ARCO -- I'm sorry -- the customers in town they go to
18 where it's the cheapest gas. That's what it is.

19 JUDGE GEARY: You are not in town, I take it?

20 MR. JOUDI: I'm sorry.

21 JUDGE GEARY: Is your station in town?

22 MR. JOUDI: Yes. Both of us are in town, but we
23 close to the freeway.

24 JUDGE GEARY: And which of the highways or
25 freeways that you referred to as the busier?

1 MR. JOUDI: 65.

2 JUDGE GEARY: And that's the one you're on?

3 MR. JOUDI: Yes.

4 JUDGE GEARY: And are you right at or very close
5 to an on-ramp, off-ramp?

6 MR. JOUDI: Yes. I'm like -- I'm next exit after
7 the ramp.

8 JUDGE GEARY: So they would exit and drive a
9 block or two to get to your station?

10 MR. JOUDI: Yes.

11 JUDGE GEARY: And is the -- do you know whether
12 or not the ramp --

13 THE JOUDI: I'm sorry. The exit from the
14 Freeway 65 right away to my station. Like I am --

15 JUDGE GEARY: Okay. Can they see anything of
16 your station, and can a driver on 65 heading -- is 65
17 east, west, north, south, or what?

18 MR. JOUDI: North south.

19 JUDGE GEARY: Okay. Can north or south traffic
20 on 65 see from the freeway approaching that exit that your
21 station is there from a high sign or something like that?

22 MR. JOUDI: Yes.

23 JUDGE GEARY: And is there a sign on the freeway
24 itself advertising -- indicating fuel available at that
25 ramp, at that exit?

1 MR. JOUDI: No. No.

2 JUDGE GEARY: All right. Those are my questions.
3 Thank you for Mr. Bearing with, Mr. Joudi.

4 MR. JOUDI: Thank you.

5 JUDGE GEARY: Thank you, Judge Long.

6 JUDGE LONG: Thank you.

7 I just have a couple of questions regarding the
8 price differential. I understand you're arguing,
9 Mr. Finnegan, that there were extremely low markups on
10 gasoline, including occasional possible negative markups
11 where the money was made up -- or the difference in income
12 was made up in the mini-mart.

13 It looks like CDTFA's audit used a price
14 differential of \$0.23 per gallon less than the average --
15 the statewide average. Is your argument then is
16 essentially that differential should be greater, that you
17 were even further below the statewide average.

18 MR. FINNEGAN: What I'll argue is that you see
19 the Department used the change of \$0.30, right. But when
20 they did it, they split up the amount by 50 percent of
21 credit, 50 percent cash. And credit prices after
22 Mr. Joudi began in business were \$0.10 higher. So what
23 you'll see in that allocation is the Department actually
24 dropped down to \$0.23 as the differentiation between the
25 statewide average and what Mr. Joudi's business was.

1 The fact he didn't have credit at that time meant
2 that \$0.28 that you see in that schedule should have been
3 utilized by the Department. But what I'm also indicating
4 is that when the Department did the test for gasoline,
5 they tested a period that was not reflective of the
6 overall period. They took the test in the December,
7 November, October time period where prices were dropping
8 dramatically, and Mr. Joudi had increased margins.

9 And you can see that by -- in my schedule
10 Exhibits 12, 1 through 5, I looked at profit and loss
11 statements for the months of August, September, October,
12 November, and December. And the district principal
13 auditor of the Fresno district took a look at what the
14 periods were for the fourth quarter 2018, as well as the
15 first quarter of 2019. But what he saw at that point was
16 high margins because of that drop in pricing.

17 The drop in cost really allowed Mr. Joudi to
18 gather income at that point. No other time in the audit
19 showing you in that graft did that occur. Yet, the
20 Department is utilizing a test on something that didn't
21 occur during the audit.

22 So the short answer is we are objecting to that
23 \$0.23 that the Department is utilizing one, because there
24 was no credit, and it should have been applied to periods
25 in 2015 when Mr. Joudi didn't have the ability to

1 differentiate between cash or credit. That only occurred
2 in June of 2018. Hopefully that --

3 JUDGE LONG: Actually, I'm sorry to interrupt,
4 but I want to just make sure that I'm clear because you've
5 said it a couple of different ways now, and I want to make
6 sure that I have the correct representation of your
7 answer. You said that Mr. Joudi didn't have credit. And
8 then also you've said that he had no way to differentiate
9 between the credit prices. Did he not accept credit cards
10 for a period of time, or is it just that he didn't have
11 the ability to differentiate between pricing for credit
12 cards throughout the audit period?

13 MR. FINNEGAN: In June of 2018, he bought all new
14 pumps and bought new software and all that. I'll have
15 Mr. Joudi describe that and what changed. But he kept gas
16 prices the same for --

17 JUDGE LONG: Right. I understand, but you're
18 not -- you're not answering any question.

19 MR. FINNEGAN: I apologize.

20 JUDGE LONG: No difference between cash and
21 credit during 2018 or was there -- or prior to June 2018,
22 or is there no credit during periods prior to June 2018?

23 MR. FINNEGAN: There was no difference in
24 pricing.

25 JUDGE LONG: Okay.

1 MR. FINNEGAN: Mr. Joudi, you can answer to that
2 better than I.

3 JUDGE LONG: And is there any evidence that prior
4 to -- within your exhibits, your 16 exhibits here, that
5 there's no price difference prior to June 2018?

6 MR. JOUDI: The -- okay. My only difference I
7 had, the Ruby cash register. And Ruby cash register, the
8 old one is not qualified to do two prices for the credit
9 card when you're on it.

10 JUDGE LONG: Okay.

11 MR. JOUDI: With my new system, my new point of
12 sale I have to switch the credit card, different prices.
13 But before that I couldn't do it. My point of sale was
14 completely like an old system.

15 JUDGE LONG: Okay. Thank you.

16 I don't have any further questions. So with that
17 we will turn our attention to CDTFA.

18 CDTFA can begin when it's ready. And I believe
19 you asked for 20 minutes. So you may begin when you're
20 ready.

21 MR. SHARMA: This is Ravinder Sharma. We asked
22 for 30 minutes, but I think we will finish within
23 20 minutes. Thank you so much.

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PRESENTATION

MR. SHARMA: Appellant, a corporation, operates a gasoline station with a mini-mart in Porterville, California, since January 2015. The Department performed and --

THE STENOGRAPHER: Sorry. Mr. Sharma, I'm sorry to interrupt.

Judge Long, can we go off the record for just a minute or even less. I have to plug in. My computer is saying it's not plugged in, and it's starting to go.

JUDGE LONG: Of course. We'll just take a minute off the record and let us know when you are ready.

THE STENOGRAPHER: Thank you.

(There was a pause in the proceedings.)

JUDGE LONG: Looks like we are all here.

Ms. Alonzo, are you ready to go?

Okay. Mr. Sharma, I am sorry to ask, but can you please start from the beginning.

MR. SHARMA: This is Ravinder Sharma. Sure. I will do it. Thank you.

PRESENTATION (continued)

MR. SHARMA: Appellant, a corporation, operates a gasoline station with a mini-mart in Porterville, California, since January 2015. That Department performed

1 an audit examination for the period of July 1, 2015,
2 through June 30, 2018. Appellant provided limited books
3 and records such as federal income tax returns for years
4 2015 to 2017 and profit and loss statements for the audit
5 period.

6 However, Appellant did not provide any source
7 documents such as purchase invoices, point-of-sale sales
8 summary reports, or cash register tapes for the audit
9 period. During the audit process, Appellant informed the
10 Department that it used handwritten monthly sales reports
11 based on cash register tapes to prepare and file quarterly
12 sales and use tax returns. However, Appellant did not
13 provide any cash register tapes, so the Department could
14 not verify the accuracy of the handwritten sales reports.

15 Due to lack of complete and reliable books and
16 records, the Department was unable to verify the accuracy
17 of Appellant's reporting method. In the absence of
18 reliable books and records, the Department used an
19 indirect audit method to verify the accuracy of reported
20 amounts asked to determine unreported taxable sales.

21 The Department reviewed profit and loss
22 statements for 2015 to 2017 and calculated achieved markup
23 of approximately 33 percent for mini-mart and 117 percent
24 for deli items; Exhibit A, page 29. Based on Department's
25 experience with similar businesses in the surrounding

1 areas, achieved markup was reasonable and acceptable. So
2 the Department accepted reported amounts for mini-mart.

3 In a detailed review of profit and loss
4 statements for 2015 to 2017 revealed markup of
5 approximately 9 percent for 2015, 6 percent for 2016, and
6 8 percent for 2017 for gasoline; Exhibit A, page 29. Due
7 to lack of source documentation such as cash register
8 tapes, point-of-sale sales data, and purchase invoices,
9 the Department could not verify the accuracy of gasoline
10 purchases and gasoline sales. So the Department used an
11 indirect audit method to verify the accuracy of gasoline
12 purchases and sales.

13 The Department's analysis of gasoline prepaid
14 sales tax were collected by vendors, and claimed gasoline
15 prepaid sales tax by Appellant showed no differences for
16 the audit period; Exhibit 8, page 53 and 54. The
17 Department accepted claimed prepaid sales tax and used the
18 same to determine total purchases of little more than
19 4.1 million gallons of gasoline for retail sales;
20 Exhibit A, page 4, and 9,900 gallons for resale;
21 Exhibit A, page 56 for the audit period.

22 Since Appellant did not provide any cash register
23 tapes or other sales records showing sales price for
24 gasoline during the audit period, the Department used
25 United States Department of Energy, that's USDE, data to

1 estimate gasoline selling price. The Department observed
2 selling price for gasoline for Appellant's business on 10
3 different days between August 6, 2018, and December 17,
4 2018.

5 And compared with average selling prices from
6 USDE and determined that Appellant's selling price per
7 gallon was \$0.23 lower than USDE's data; Exhibit A,
8 page 22. The Department adjusted USDE data for a price
9 differential of \$0.23 and used applicable sales tax rate
10 to determine audited ex tax sale of gasoline of
11 approximately \$11.4 million for retail sales for the audit
12 period; Exhibit A, page 12.

13 Appellant reported ex tax gasoline sales of
14 little more than \$10.3 million resulting in unreported
15 gasoline sales of \$1.07 million for the audit period;
16 Exhibit A, page 10. Similarly, the Department determined
17 audited sales for resale of approximately \$273,000 for the
18 audit period; Exhibit A, page 56. Appellant claimed total
19 sales for resale of around \$271,000 resulting a difference
20 of around \$2,000, which was not significant; Exhibit A,
21 page 55. Due to immaterial differences, the Department
22 accepted claimed sales for resale for the audit period.

23 Based on the above audit procedures, the
24 Department determined unreported gasoline sales of little
25 more than \$1.07 million for the audit period; Exhibit A,

1 page 10. As of now, Appellant has not provided any
2 documentary evidence to show that audited gallons of
3 gasoline purchases for the audit period are not correct.

4 Further, despite various requests Appellant has
5 not provided any cash register tapes or point-of-sale data
6 to show that audited selling price per gallon is not
7 correct or was lower during the audit period. Appellant
8 contends that the Department accepted a similar markup by
9 another retailer in the same area. The Department urges
10 the Panel to give this evidence no weight.

11 Revenue & Taxation Code Section 7056 prohibits
12 the Department from divulging any information regarding
13 retailers that are not party to this appeal. The
14 Department examines and evaluates each retailer based on
15 available books and records and many other factors related
16 to that specific retailer.

17 It will be prejudicial by the Panel to consider
18 Appellant's allegations regarding a retailer not party to
19 this appeal when the Department is legally prohibited from
20 explaining how the facts and circumstances for that
21 retailer may be different from the facts and circumstances
22 in the audit being appealed now. The Panel should focus
23 solely on whether the audits of this appeal was properly
24 performed.

25 Appellant contends that it sold gasoline at

1 significantly lower prices than what were used by the
2 Department. In response, the Department submits that
3 despite various requests Appellant failed to provide any
4 books and records to support the reported amounts.
5 Further, Appellant did not provide any cash register tapes
6 or retail sales records to show that it sold gasoline at
7 lower prices during the audit period.

8 Based on the above, the Department has fully
9 explained the basis for the deficiency and proved that the
10 determination was reasonable based on the available books
11 and records. Further, the Department has used approved
12 audit methods to determine the deficiency. Therefore,
13 based on the evidence presented, Department requests that
14 Appellant's appeal be denied.

15 This concludes my presentation, and I'm available
16 to answer any question you may have. Thank you.

17 JUDGE LONG: Thank you.

18 This is Judge Long. I just want to turn to my
19 co-Panelists to see if they have any questions.

20 Judge Geary, do you have any questions?

21 JUDGE GEARY: Yes. Thank you, Judge Long.

22 I think probably Mr. Sharma, did you indicate the
23 legal basis for the prohibition concerning the
24 Department's discussion or disclosure of the audit of the
25 taxpayer who is not before us?

1 MR. SHARMA: This is Ravinder Sharma. Yes, it's
2 Revenue & Taxation Code 7056, prohibits the Department
3 from divulging any information regarding retailers that
4 are not party to this appeal.

5 JUDGE GEARY: Thank you.

6 MR. SHARMA: Thank you.

7 JUDGE GEARY: That's the only question I have.
8 Thank you, Judge Long.

9 MR. DUSKIN: Can I ask Mr. Sharma a question?

10 JUDGE LONG: This is Judge Long. No.

11 MR. DUSKIN: Okay.

12 JUDGE LONG: You may not ask any questions of
13 CDTFA as they're not testifying. They're only presenting
14 their arguments.

15 MR. DUSKIN: All right.

16 JUDGE LONG: Judge Kwee, do you have any
17 questions for CDTFA?

18 JUDGE KWEE: I don't have any questions. I'll
19 turn it back to you, Judge Long.

20 JUDGE LONG: Thank you.

21 I also do not have any questions about how the
22 audit was conducted. So we will move on to Appellant's
23 closing statement. Let me just -- took a lot of notes
24 here.

25 Mr. Finnegan, you requested an additional 5

1 minutes to make a closing statement. You may begin when
2 you are ready.

3

4 CLOSING STATEMENT

5 MR. FINNEGAN: Thank you, Judge Long. Thank you,
6 Judge Geary, and thank you, Judge Kwee.

7 What Mr. Sharma had indicated, he said that the
8 Appellant had presented no accounting records. We never
9 received an email ever requesting anything we hadn't
10 provided. It's good to note that the Department has a
11 document called 414Z where they have to identify any
12 correspondences with the taxpayer on any areas that
13 they're asking for documents or information. For some
14 reason the Department did not request that from this
15 auditor. If you look at 414Z, it's literally -- it's
16 blank. It literally says nothing. It doesn't say
17 anything of what he's done.

18 The area that Mr. Sharma talks about is purchase
19 invoices. As Mr. Duskin is well aware, he's never
20 withheld accounting records on purchase invoices.
21 Mr. Sharma also indicates that they did the reconciliation
22 of prepaid sales tax. Well, the prepaid sales tax is paid
23 on the purchase invoices. The accounting records in the
24 audit do the reconciliation of all purchases of gasoline.
25 It's disingenuous that now he says that they didn't have

1 accounting records for gasoline purchases. That's a
2 falsehood. It's completely false.

3 The other area he's talking about is source
4 documentation, the taxpayer presented no evidence. That's
5 not true. The Department had bank records and you know
6 that bank records are utilized all the time to determine
7 what the taxable transactions are. It's part of the audit
8 manual and something the auditor is required to look at.

9 Dennis, would you care to discuss that? You
10 wrote the record requirements.

11 MR. DUSKIN: Yes. That's what I wanted to point
12 out is anything the auditor asked for was presented. The
13 only documents we couldn't present was the cash register
14 tapes. Everything else in my records are scanned. I have
15 a scanned invoice of every gasoline purchase invoice since
16 he started his business long before this audit to date.

17 And I would have happily presented anything that
18 he had requested. I'm not sure if I did request the
19 purchase invoices, but I don't recall being asked about
20 that. I don't remember being told I wasn't presenting
21 any. I never -- I never had such a request.

22 MR. FINNEGAN: And if the Department would have
23 requested it, the Department Audit Manual chapter 2, as
24 Mr. Sharma is quite aware, requires that documentation to
25 be identified on that 414Z. It's how the Department

1 corresponds so that when we get into these types of
2 hearings, there is no he said, she said. It's indicated
3 on the document. That has been left blank.

4 And it's also required that the supervisor -- the
5 audit supervisor also reports onto that 414Z all the
6 occurrences that happen. Now, we provided contemporaneous
7 information on daily sales through Mr. Joudi's daily sales
8 records. That was used to verify taxable sales, which are
9 taxable non-gasoline sales which are 20 percent of the
10 total overall sales and even a higher percent of his
11 margins.

12 The Department is saying we didn't provide
13 records. That's not the case. And the reason why I was
14 forced to go to another audit -- and obviously he --
15 Mr. Sharma identifies 7056. The Department in its
16 correspondences with me indicated that we have no --
17 actually, the way they phrased it is we do not believe
18 that your markup or Mr. Joudi's markup is representative
19 of the margins that we see in gasoline for your location.

20 That is never published, you know. I don't need
21 to know the name of the business that has that. But for
22 them to say, you know, you just didn't get enough of a
23 margin. Well, what margin was I supposed to have? Is
24 there some -- is there some approved percentage that the
25 Department says, yeah, that's good? I found that

1 percentage by -- when the Department accepted another
2 audit.

3 All right. You met the 9 percent in 2015. You
4 met the 8 percent in 2016. You met the 11 percent.
5 That's the threshold. But my God, how do you know that?
6 How do you know that from the Department if they won't
7 say, hey, this is what we expect of you?

8 My client did very well by keeping taxes -- or by
9 keeping retail sales prices low. He ended up paying far
10 more to the CDTF at the end of the audit than he did at
11 the beginning of it when he began business in 2015 as
12 Mr. Sharma indicated. \$167,000 more than what he did in
13 the beginning of this review.

14 So if you're looking for somebody that's not
15 reporting the taxes, that's not how it's done. I was an
16 auditor for 20 years. How it's done is they'll take cash
17 and they won't deposit it. They will have lower sales.
18 They'll purchase product without reporting that on their
19 balance -- or on their financial statements. The
20 Department had every opportunity to look at purchases.
21 The Department had every opportunity to look at sales.

22 What happened is like Dennis said. The auditor
23 was fixated on the retail gasoline, and he said I can't
24 believe you're this low. Well, when he added \$300,000 to
25 each and every year of Mr. Joudi's reporting -- I'm

1 getting that based on \$1 million over the three years is
2 \$333,000. You add that to Mr. Joudi's retail gasoline
3 sales, his margin now becomes 20 percent over cost, not
4 6.36, not 7.91, well over 20 percent, which is unheard of
5 in the highest poverty area county of all of California.

6 And it's unheard of because you're seeing social
7 media accounts that say this guy has got the lowest prices
8 in town. He's lower than ARCO. I presented evidence on
9 multiple occasions to specific occasions to the Department
10 saying, look, he's \$0.06 to \$0.08 less on unleaded sales.
11 And I bet today he's even less on that.

12 So I would urge this, Judges, to take an overall
13 look on this and say, hey, he did quite well for himself.
14 He did everything a business owner should. He's increased
15 his gross profit. He's paying more taxes. He's earning
16 good money on that, and that's how he did it. He kept his
17 prices low. He attracted more customers. More customers
18 went into the business. They bought liquor, beer, wine,
19 soda, all of the other things he sold other than gasoline.

20 He still made money on gasoline. Do not lose
21 sight of that. I have shown, on the P&Ls that in the 2018
22 period alone, he had \$400,000 of gross profit from
23 gasoline. That was not the only area he was making money
24 on though. And I -- you know, I appreciate the
25 Department. You can't penalize somebody just on saying,

1 all right, we're going to come up with a number and here
2 you go. And I think that's exactly what the Fresno
3 district has done in this matter.

4 Thank you.

5 JUDGE LONG: Thank you.

6 I do want to actually follow up with CDTFA about
7 something that Mr. Finnegan said. Regarding the bank
8 statements, my understanding is that no bank analysis was
9 done, and I'm looking at Exhibit A, page 2, and it does
10 indicate bank deposits -- or bank statements were
11 provided. Am I correct in my understanding of this
12 case -- or with respect to the bank statements?

13 MR. SHARMA: This is Ravinder Sharma. That's
14 correct. No bank statements were provided and no analyses
15 were done. I'm just saying based on the audit working
16 papers and reviewing everything available to us from the
17 very beginning to the audit process, appeals process, and
18 as of now.

19 JUDGE LONG: Okay. Thank you. I think I
20 understand your position.

21 With that, I just want to make sure. Do my
22 co-Panelists have any final questions?

23 Judge Geary, do you have any questions?

24 JUDGE GEARY: Actually, I do for Mr. Finnegan.

25 Mr. Finnegan, is there somewhere in Appellant's

1 evidence and analysis of what you think the correct result
2 is, or do you believe the correct result is that there
3 should be no deficiency determined for the period at
4 issue?

5 MR. FINNEGAN: Absolutely, we feel that there
6 should be no deficiency. We believe everything that was
7 shown on the financial statements was accurate prepared by
8 Dennis Duskin. Dennis has been in the business for 30
9 years. He knows what to look for on areas where taxpayers
10 are not reporting properly. He's testified that he's
11 received no indication of when he was preparing the tax
12 returns, be it the sales tax returns, his federal income
13 tax return, any of these areas.

14 And the other critical area that I think is
15 important is the auditor utilized the Schedule 12A-1C,
16 Judge Geary. And he allocated cost back -- or these
17 retail sales prices back for three years. Well, you know,
18 he used the wrong number. He's indicating that there was
19 credit charged. That wasn't the case. Mr. Joudi has
20 testified that it was one single retail sale price. It
21 was no \$0.10 greater price in any points in the audit.
22 Yet, this is a form that CDTFA uses.

23 And I would also state that in that other audit,
24 if you so choose to look at it, you will see that the
25 Department utilized this other methodology to ascertain

1 what the gasoline prices were. So the fact that they had
2 all the source document, that they had all the books and
3 records, the Department still used this methodology to
4 dictate how much they owed.

5 And, in fact, they issued a determination that
6 was petitioned. And the Department looked at that and
7 said, okay, you're right. We're going to accept this.
8 But, again, this methodology is used all the time by the
9 district, and it doesn't matter if you have all the books
10 and records and all the source documents.

11 This is a go to that they do. He just doesn't
12 want to say that. You know, it happened on the subsequent
13 audit of my client, and he had books and records. Yet,
14 they still used this methodology. So I would imagine this
15 is unique to the Fresno district.

16 JUDGE GEARY: Thank you, Mr. Finnegan.

17 I have one question also for Mr. Sharma.

18 Mr. Sharma, is there a 414Z in the
19 Department's -- in CDTFA's evidence?

20 MR. SHARMA: This is Ravinder Sharma. That is
21 correct. There's a 414Z, and there are not that many
22 comments because originally when auditors try to contact
23 the Appellant or representative, the audit was requested
24 to be transferred to a different district. So based on my
25 review of this, I mean, the audit working papers, the

1 auditors might have requested this information when they
2 talked to the representative of Appellant because of the
3 audit being transferred from one district to another
4 district. That's why some of the 414Z comments may be
5 missing. But, again, 414Z comments are just like not
6 everything that's part of the audit. Yes, to answer your
7 question, 414Z is attached.

8 JUDGE GEARY: Thank you.

9 Those are my only questions, Judge Long. Thank
10 you.

11 MR. PARKER: Judge Geary, I just wanted to add
12 that the 414Z is Exhibit A, page 73. Just so it's in the
13 record and easy to find.

14 JUDGE LONG: Thank you.

15 Judge Kwee, any final questions before we
16 conclude?

17 JUDGE KWEE: This is Judge Kwee. I don't have
18 any questions. Thank you.

19 JUDGE LONG: Okay. Then I believe we are ready
20 to conclude our hearing.

21 Thank you everyone for coming in today. This
22 case is submitted on Thursday, April 20th, 2022 [sic] the
23 Judges will meet and decide your case later on, and we
24 will send you a written opinion of our decision within 100
25 days after the record is closed.

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Today's hearing in the Appeal of Sham Gas
Express, Inc., is now adjourned.
And this concludes our hearings for the day.
Thank you.
(Proceedings adjourned at 11:42 a.m.)

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the State of California, do hereby certify:

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I have hereunto subscribed my name this 8th day
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